



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/454,027	12/03/1999	DEEPEN SINHA	CASE15-41	3278

7590 02/25/2004
Joseph B. Ryan
Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560

EXAMINER

GRAHAM, ANDREW R

ART UNIT PAPER NUMBER

2644

DATE MAILED: 02/25/2004

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/454,027

Applicant(s)

SINHA ET AL.

Examiner

Andrew Graham

Art Unit

2644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 08 January 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet for specific response to applicant's arguments.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

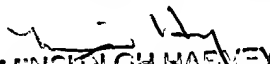
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


LINCOLN G. HARVEY
PRIMARY EXAMINER


Andrew Graham

Art Unit: 2644

Response to Arguments

Applicant's arguments filed January 8, 2004 have been fully considered but they are not persuasive. The difference in the examiner's position and the applicant's apparent position seems to rest in different interpretations of the provided claim language.

In the response below, discussions and rejections of the first and second information and the first representation respectively also apply to the similar third and fourth information and second representation.

On page 3, lines 12-17, the applicant presents a reworded version of an argument that was presented in lines 14-15, page 4 of the previous amendment of July 28, 2003 and states, "The fact that other aspects of the claim limitations are not met serves as an indication that the correspondence alleged by the examiner is incorrect". The examiner respectfully submits that this is a complicated manner in which to construct the argument. Simply put, if limitation B is an integral aspect of limitation A, it is unclear why "for the sake of argument" that A should ever be assumed to correct when arguments are then presented against B. The clear, most direct response would be to simply present arguments against B, the inherent relationship being that, since B is an integral aspect of A, then A is also objectionable, and again, should not be assumed to be correct. The assumption of A to be correct under the premise of arguing B infers that there may or may not be aspects of A - unrelated to B - that the applicant feels are also arguable, but are not addressed, instead

Art Unit: 2644

being "assumed to be correct". This is why this particular phrase was cited in the previous office action, to note that the manner in which the arguments are presented include the possibility that other aspects of A, in this case, the "correspondence", may be considered arguable by the applicant, but that these aspects are not listed. For example, as the applicants "do not agree in any way that this correspondence is correct", the reasoning behind why the applicant feels the first and second components of the signal in the claims do not correspond to the left and right channel signals of the reference is not cited in the applicant's response. The aspect that the applicant does specifically address, 'B' in the above discussion, was addressed by the examiner in the previous office action, and has been addressed by the examiner again in this response. Again, the examiner is unable to address any discrepancies that are potentially inferred but not particularly listed.

On page 3, lines 21-22 and 26-27, the applicant has stated, "Applicants submit that there is no such separately-identifiable" first and second, and third and fourth information in each of the error signals of Edler. Similarly, the applicant has stated in lines 11-14 and 18-19, "the claims in effect specify that the first information and second information are separately identifiable as such with first representation", and the same for the "second representation". The examiner respectfully disagrees with this interpretation of the claim language. The examiner maintains that the aspect of "identifiable", much less "separately identifiable", of the

Art Unit: 2644

information within the representations is not addressed in the given claim language. The exact claim language is "the first representation containing first information concerning at least the first component, and second information concerning at least one coefficient for predicting the second component based on the first information". The key words here are "representation" and "containing". The word "representation" does not inherently include the feature of comprising distinct sub-components. The word "containing" does not inherently include the feature of the sub-components therein being able to be separately ascertained when included in the "representation". The word "containing" simply relates that said information is a part of the representation, not that, at the same time, it can be distinguished.

The claim language does support the idea that the first and second information are distinct information, and at some point in the system are separately identifiable, but not specifically within the "first representation". This is why the reference of Edler provides basis for rejecting said relevant claim language. The information for the left channel signal and the signal from the predictor are combined with adders into a single signal, which is then transmitted. Thus, the teachings of Edler meet the limitations of the presented claim language, as both information can be separately identified at some point or instance in the system, and that both information are included in the signal representation. As the concept of "identifiable" and the aspects of the information that are represented

Art Unit: 2644

in the given claim language have been addressed above, this response applies to the third paragraph of page 4, specifically lines 22-23 that state that the examiner "is failing to give appropriate patentable weight to all claim limitations".

On page 4, lines 10-11 and 17-18, the applicant also states that the "first and second information have different characteristics relative to one another". The examiner respectfully disagrees, depending on the interpretation of "different characteristics". This is a substantially broad phrase, and the applicant's interpretation of said phrase may or may not be included in the given relative claim language. The examiner agrees that the information includes different data or interpretable facts, or that the respective data may be created based upon differed reasoning, but not necessarily that the electrical implementation of said information is different when such represented in other manners, such as visibly on a graph. Again, this aspect may or may not be supported by the presented claim language, based on the interpretation of the word "characteristic". The applicant is asked to provide further context for such a term if the basis behind including said term involves critical pertinence to the presented argument.

On page 4, lines 26-29, the applicant quotes a passage from the previous office action and states, "it does not relieve the Examiner from the burden of showing that 'each and every element' of a given claim is disclosed in Edler". The examiner again respectfully notes that the limitation of "separately identifiable" information within

Art Unit: 2644

the representations is an aspect not addressed in the given claim language. As is such, the examiner, respectfully believes that all limitations presented in the claims have been addressed.

On page 5, lines 1-5, the applicant cites that the error prediction signals are one-dimensional elements of a vector signal. Again, as cited in the previous office action, the examiner respectfully maintains that one-dimensional elements, or signals not written in vector notation do not necessarily include only a single information. The various capabilities of a different signal processing devices may be able to discern different information from the same signal, but the signal is still a "one-dimensional" signal. Regardless, the concept of "who" or "what" is able to "identify" the information is not addressed in the claim language.

The claim language discussed above is included in each of the independent claims (1,8,19,25,32,43) and response presented above applies to each claim accordingly. The applicant presents no further arguments involving the dependent claims, citing the dependence upon these independent claims. Accordingly, as rejection has been maintained for the independent claims, the dependent claims also remain rejected on the grounds previously presented.

On page 6, lines 8-10, the applicant has stated, "There has been no showing in the present 103(a) rejection of objective evidence of record that would motivate one skilled in the art to combine references". More specifically, the applicant cites the final sentence of the paragraph continued between pages 8 and 9 of the

Art Unit: 2644

previous office action, stating "Applicants submit that this passage fails to provide the requisite motivation for the proposed combination" and that the statement "is believed to be precisely the type of subjective, conclusory statement that the Federal Circuit has indicated provides insufficient support for an obviousness rejection". The examiner respectfully disagrees, noting the evidence of record. The proposed modification involves including the quality monitoring and compensation system of Mallinckdrodt into the decoder component of Edler, which the evidence shows is the part of the system of Edler that receives the multiple transmissions and outputs a reconstructed version of the input signal. The system of Edler does not detail any error detecting components in the receiver portion of the system, or in other words, the bit error rate of the received signal of Edler is not presented as being involved with the operation of the system of Edler. The cited components of Mallinckdrodt obtain the data error rate of a received signal and adjusts the power of the transceiver system accordingly, wherein the power of the signal corresponds to the received quality of the signal. The cited passage (page 14, lines 28-40) includes the expression of the likelihood of the error bit rate of a received signal of exceeding a maximum error bit rate. This passages infers and the knowledge of one of ordinary skill in the art at the time the invention was made would have included the concept that a minimal bit error rate is preferable for reconstructing a signal from said bits of the received signal. Obtaining and analyzing the bit error rate, as proposed by Mallinckdrodt, provides

Art Unit: 2644

information, intelligent information specifically gathered and analyzed according to established criteria, to be further utilized by the system in responding and adjusting or compensating the signal based on the signal quality detected in the system, as is performed by the adaptive power systems of Mallinckdrodt. This concept, presented in Mallinckdrodt, of obtaining information about a received signal and modifying the signal according to that signal is the basis for the statement that the cited components of Mallinckdrodt would have provided for the system of Edler "an intelligent, structured approach to constructing the best possible representation of an original input audio system". Accordingly, the examiner believes that the motivation presented is based on objective evidence of record.

In response to applicant's argument on page 6, lines 23-36 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Again, as cited above, the motivation statement is based upon the teachings included in the references.